

# Exhibit 19

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2875

Honorable Robert B. Kugler,  
District Judge

Honorable Joel Schneider,  
Magistrate Judge

**This Documents Relates to All Actions**

**AMERISOURCEBERGEN CORPORATION'S SECOND  
SUPPLEMENTAL RESPONSES TO PLAINTIFFS' SECOND AMENDED  
SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO  
WHOLESALE DEFENDANTS**

Pursuant to the Federal Rules of Civil Procedure and the Local Rules of the District of New Jersey and the Orders entered by the Court (Dkt. Nos. 507, 509, 518), AmerisourceBergen Corporation ("ABC") provides these second supplemental responses to Plaintiffs' Second Amended Set of Requests for Production of Documents to Wholesaler Defendants as follows:

**PRELIMINARY STATEMENT**

The Responses are based upon the facts and information presently known and available to ABC. Discovery, investigation, research, and analysis are still ongoing and may disclose the existence of additional facts, add meaning to known facts, establish entirely new factual conclusions, establish entirely new legal contentions, or possibly lead to additions, variations, or changes to these Responses. The

Responses are, therefore, based only upon ABC's knowledge as of the date of these Responses and are given without prejudice to ABC's right to produce any subsequently discovered documents. ABC reserves the right to change or supplement these Responses as additional facts are discovered, revealed, recalled, or otherwise ascertained, and to the extent further analysis and research discloses additional facts, contentions, or legal theories that may apply.

ABC submits these Responses under circumstances where the Court has barred ABC from objecting to individual Requests served by Plaintiffs. ABC is following the Court's Order barring objections as it understands it must, but its responses without objection are not, and should not be interpreted as, an agreement that the Court's elimination of protections afforded ABC by the Federal Rules of Civil Procedure and fundamental concepts of procedural due process is proper. Inclusive of that point is that ABC is being required to respond and incur the disruption and expense of responding and locating, assembling and producing documents prior to any judicial determination of whether there is a viable cause of action in this litigation against ABC, which ABC contends there is not. By responding and producing, ABC does not waive and it reserves and preserves all objections to the Requests below, including, but not limited to, objections based on relevance, confidentiality, vagueness, ambiguity, scope, time, disproportionality, and improper premise.

Further, the Responses below and the production of documents in response to the Requests is not, and should not be interpreted as, a concession of the relevance or admissibility of such documents or any information referred to or contained in the produced documents. ABC's Responses to the Requests are made without in any way waiving or intending to waive (a) any objections as to the competency, relevance, materiality, propriety, privilege, or admissibility as evidence, for any purpose, of any produced documents or any information referred to or contained in the produced documents in response to the Requests or (b) the right to object on any ground to the use of the documents produced or information referred to or contained in the produced documents in response to the Requests at any hearings or at trial, or in any other proceedings, including, but not limited to, proceedings in any appellate court; or (c) any objections to any further discovery requests, including those based on relevance, burden, proportionality and privilege. Documents produced by ABC in response to the Requests are produced subject to the Confidentiality and Protective Order (Dkt. No. 139) entered by the Court, as applicable.

## **RESPONSES TO REQUESTS FOR PRODUCTION**

### **I. SOURCING (UPSTREAM)**

- 1. For purchases of VCDs by you from Manufacturer Defendants during the time period from January 1, 2012 to December 31, 2019, produce documents sufficient to identify the dates of purchase, the quantities/units purchased, the NDC, batch and lot numbers, and expiration date (to the extent such information is maintained by you in the ordinary course of business and can be obtained**

**following a reasonable search) for the VCDs purchased, and the name of Manufacturer Defendant from whom the VCDs were purchased.**

**RESPONSE:**

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business using the NDC numbers listed on Exhibit A. ABC is producing a copy of its data for purchases of VCDs with NDC numbers listed on Exhibit A from Manufacturer Defendants for the time period January 1, 2012 to December 31, 2019. (ABC-MDL2875-0000651)

**II. SALES (DOWNSTREAM)**

- 2. For sales of VCDs by you to Retail Pharmacy Defendants during the time period from January 1, 2012 to December 30, 2019, documents sufficient to identify the quantities/units sold, the NDC, batch and lot numbers, and expiration date (to the extent such information is maintained by you in the ordinary course of business and can be obtained following a reasonable search), and purchaser name.**

**RESPONSE:**

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business using the NDC numbers listed on Exhibit A. ABC is producing a copy of its data for sales of VCDs with NDC numbers listed on Exhibit A to Retail Pharmacy Defendants for the time period January 1, 2012 to December 31, 2019. (ABC-MDL2875-0000650.)

- 3. [Removed]**

**III. WARRANTIES/STATEMENTS (UPSTREAM)**

- 4. Produce documents sufficient to identify your final written policies, if any, that set forth the shipment documents you require be provided to you by a Manufacturer Defendant.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business. ABC is not in possession of “final written policies,” as it understands that phrase, that identify documents required to be provided to ABC by a Manufacturer Defendant with the shipment of a VCD.

5. **Produce exemplar documents sufficient to identify the type of manufacturer-included packaging or labeling documents, shipment documents, or similar information which accompany VCDs sold to you by the Manufacturer Defendants.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business. ABC is producing exemplars of documents that accompanied shipments of VCDs from Manufacturer Defendants to ABC prior to December 31, 2019, with the exception of exemplars of the transaction information, transaction history, and transaction statement (“T3”) documents/data received from Manufacturer Defendants. (ABC-MDL2875-0000635-0000641.) As a wholesaler, ABC is prohibited from making such production pursuant to the wholesaler-specific section 360eee-1(c)(1)(A)(v)(II) of the DSCSA, which specifically establishes the confidential nature of such documents (“A wholesale distributor shall . . . maintain the confidentiality of the transaction information (including any lot level information consistent with the requirements of this section), transaction history, and transaction statement for a product in a manner that prohibits disclosure to any person other than the Secretary or other appropriate Federal or State official. . .”). Moreover, FDA has exclusive jurisdiction to determine exceptions, if any, to such statutory confidentiality and prohibition, and section 360eee-4(a) preempts any action requiring production of T3 documents in a manner inconsistent with the above.

**IV. WARRANTIES/STATEMENTS (DOWNSTREAM)**

6. **Produce documents sufficient to identify your final written policies, if any, that set forth the shipment documents you require be provided by you to Retail Pharmacy Defendant(s) or other retail pharmacies concerning VCDs sold by you.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business. ABC is not in possession of “final written policies,” as it understands that phrase, that identify documents ABC requires be provided to a Retail Pharmacy Defendant with the shipment of a VCD.

7. **Produce documents sufficient to identify as exemplar the type of manufacturer-included packaging or labeling documents, shipment documents, or similar information which accompany VCDs sold by you to Retail Pharmacy Defendants or other retail pharmacies.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business. ABC is producing exemplars of documents that accompanied shipments of VCDs from ABC to Retail Pharmacy Defendants prior to December 31, 2019, with the exception of exemplars of the transaction information, transaction history, and transaction statement (“T3”) documents/data provided to Retail Pharmacy Defendants. (ABC-MDL2875-0000652-0000664) As a wholesaler, ABC is prohibited from making such production pursuant to the wholesaler-specific section 360eee-1(c)(1)(A)(v)(II) of the DSCSA, which specifically establishes the confidential nature of such documents (“A wholesale distributor shall . . . maintain the confidentiality of the transaction information (including any lot level information consistent with the requirements of this section), transaction history, and transaction statement for a product in a manner that prohibits disclosure to any person other than the Secretary or other appropriate Federal or State official. . .”). Moreover, FDA has exclusive jurisdiction to determine exceptions, if any, to such statutory confidentiality and prohibition, and section 360eee-4(a) preempts any action requiring production of T3 documents in a manner inconsistent with the above.

**V. TESTING/INSPECTION**

8. **Produce documents sufficient to identify the testing and testing results of VCDs provided to you by the Manufacturer Defendants for VCDs purchased by you during the time period from January 1, 2012 to December 30, 2019.**

RESPONSE:

ABC is not in possession of documents responsive to this Request. Responding further, as a wholesaler, in the ordinary course of business ABC is not provided with “testing” or “testing results,” as ABC understands those terms, for the VCDs purchased from Manufacturer Defendants.

9. **Produce documents sufficient to identify the testing, if any, you performed on VCDs purchased by you from Manufacturer Defendants, and results thereof, during the time period from January 1, 2012 to December 30, 2019.**

RESPONSE:

ABC is not in possession of documents responsive to this Request. Responding further, as a wholesaler, ABC does not in the ordinary course of business perform “testing,” as ABC understands that term, on VCDs purchased from Manufacturer Defendants. There is no regulatory requirement or state-law duty for ABC to perform “testing,” as ABC understands that term, on the VCDs ABC purchased from Manufacturer Defendants.

**VI. DISTRIBUTION CENTERS**

10. **Produce documents sufficient to identify your distribution centers from which VCDs purchased by you from Manufacturer Defendants were shipped, including location and state(s) served by each distribution center.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business. ABC is producing a copy of its data for sales of VCDs with NDC numbers listed on Exhibit A to Retail Pharmacy Defendants for the time period January 1, 2012 to December 31, 2019, which data identifies the distribution center that shipped each VCD. (ABC-MDL2875-0000650)

11. **To the extent available, produce documents sufficient to identify your distribution centers that received or shipped VCDs purchased by you from Manufacturer Defendants subject to recall.**



RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business using the NDC numbers listed on Exhibit A. ABC is producing a copy of its data for purchases of VCDs with NDC numbers listed on Exhibit A from Manufacturer Defendants for the time period January 1, 2012 to December 31, 2019, which data identifies the distribution center that received shipment of the purchased VCDs, including VCDs subject to subsequent recall. (ABC-MDL2875-0000651) ABC also is producing a copy of its data for sales of VCDs with NDC numbers listed on Exhibit A to Retail Pharmacy Defendants for the time period January 1, 2012 to December 31, 2019, which data identifies the distribution center that shipped each VCD, including VCDs subject to subsequent recall. (ABC-MDL2875-0000650)

**VII. RECALL**

- 12. Produce documents sufficient to identify your final written policies or procedures specifically governing the VCD recalls, if any.**

RESPONSE:

It is unclear to ABC what is meant by the phrase “specifically governing the VCD recalls” in this Request. ABC previously produced copies of its Product Recall Policy and Recall Manual applicable to the recalls of the VCDs at issue in this litigation. (ABC-MDL2875-00000083-00000177)

- 13. Produce documents sufficient to show the initial VCD recall communications you received from the Manufacturer Defendants from whom you purchased VCDs.**

RESPONSE:

ABC has produced communications from Manufacturer Defendants about the recall of VCDs. (ABC-MDL2875-00000271-00000273; ABC-MDL2875-00000304-00000306; ABC-MDL2875-00000308; ABC-MDL2875-00000321; ABC-MDL2875-00000322; ABC-MDL2875-00000324; ABC-MDL2875-00000336; ABC-MDL2875-00000354; ABC-MDL2875-00000355; ABC-MDL2875-00000357; ABC-MDL2875-00000369; ABC-MDL2875-00000375; ABC-MDL2875-00000376; ABC-MDL2875-00000385; ABC-MDL2875-00000393-00000395; ABC-MDL2875-00000406; ABC-MDL2875-00000410; ABC-MDL2875-00000411; ABC-MDL2875-00000413; ABD-MDL2875-

00000422; ABC-MDL2875-00000426-00000428; ABC-MDL2875-00000439; ABC-MDL2875-00000445; ABC-MDL2875-00000456; ABC-MDL2875-00000468; ABC-MDL2875-00000477; ABC-MDL2875-00000498; ABC-MDL2875-00000509; ABC-MDL2875-00000515-00000517; ABC-MDL2875-00000528; ABC-MDL2875-00000532; ABC-MDL2875-00000533; ABC-MDL2875-00000543; ABC-MDL2875-00000563-00000565; ABC-MDL2875-00000577; ABC-MDL2875-00000597-00000599; ABC-MDL2875-00000610; and ABC-MDL2875-00000631-00000633)

14. **Produce documents sufficient to show the official notice, if any, by which you communicated any VCD recall to any Retailer Defendant.**

RESPONSE:

ABC has produced documents about communications with Retailer Defendants regarding the recall of VCDs. (ABC-MDL2875-00000255; ABC-MDL2875-00000258; ABC-MDL2875-00000259; ABC-MDL2875-00000262; ABC-MDL2875-00000293; ABC-MDL2875-00000297; ABC-MDL2875-00000310; ABC-MDL2875-00000311; ABC-MDL2875-00000313; ABC-MDL2875-00000314; ABC-MDL2875-00000317; ABC-MDL2875-00000327; ABC-MDL2875-00000331; ABC-MDL2875-00000335; ABC-MDL2875-00000356; ABC-MDL2875-00000359; ABC-MDL2875-00000360; ABC-MDL2875-00000364; ABC-MDL2875-00000377-00000381; ABC-MDL2875-00000384; ABC-MDL2875-00000398; ABC-MDL2875-00000401; ABC-MDL2875-00000402; ABC-MDL2875-00000405; ABC-MDL2875-00000412; ABC-MDL2875-00000414-00000418; ABC-MDL2875-00000421; ABC-MDL2875-00000431; ABC-MDL2875-00000434; ABC-MDL2875-00000435; ABC-MDL2875-00000438; ABC-MDL2875-00000446; ABC-MDL2875-00000450; ABC-MDL2875-00000469;; ABC-MDL2875-00000500; ABC-MDL2875-00000501; ABC-MDL2875-00000504; ABC-MDL2875-00000505; ABC-MDL2875-00000508; ABC-MDL2875-00000520-00000522; ABC-MDL2875-00000524; ABC-MDL2875-00000527; ABC-MDL2875-00000532; ABC-MDL2875-00000534; ABC-MDL2875-00000538; ABC-MDL2875-00000539; ABC-MDL2875-00000542; ABC-MDL2875-00000567-00000568; ABC-MDL2875-00000572; ABC-MDL2875-00000573; ABC-MDL2875-00000576; ABC-MDL2875-00000601-00000602; ABC-MDL2875-00000605; ABC-MDL2875-00000606; and ABC-MDL2875-00000609)

15. **Produce documents sufficient to identify by NDC, batch and lot numbers (to the extent such information is maintained by you in the ordinary course of business and can be obtained following a reasonable search) recalled VCDs: (a) currently on hand; (b) returned by you; or (c) destroyed by you.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business for recalled VCDs processed by ABC. ABC is producing a copy of an inventory of recalled VCDs in its possession as of December 31, 2019. (ABC-MDL2875-0000634) ABC is not in possession of any documents regarding destroyed VCDs. Documents, if any, regarding recalled VCDs processed by ABC in compliance with instructions provided by the Recalling Firm and returned to the Recalling Firm or a third-party designee are not centralized and not reasonably accessible.

16. **Produce documents sufficient to identify a list of your significant employees involved in managing the recall of VCDs.**

RESPONSE:

ABC identifies the following employee who was significantly involved in the managing of the recall of VCDs, as ABC understands those terms: Sara Hengler, Vice President – Supply Chain.

17. **Produce documents sufficient to identify distribution facilities that received any recalled VCD.**

RESPONSE:

See Response to RFP No 11.

**VIII. COMPLIANCE WITH THE DRUG SUPPLY CHAIN SECURITY ACT**

18. **Documents sufficient to identify your final written policy(ies) or procedures used by you to track purchases and sales of prescription drugs pursuant to the Drug Supply Chain Security Act and regulations promulgated thereunder, and/or final written policy(ies) or procedures used by you to track purchases and sales**

**of prescription drugs after January 1, 2012, and prior to the enactment of the DSCSA.**

**RESPONSE:**

This Request appears to be based on incorrect premises regarding the requirements of DSCSA. ABC has produced written policies and procedures regarding product tracing for human prescription drug products. (ABC-MDL2875-00000001-00000082)

**IX. DOCUMENT PRESERVATION**

19. **Produce the final document/data retention or destruction policies, or sections thereof, if any, in effect during the time period from January 1, 2012 to December 31, 2019 and applicable to records of purchases and sales of VCDs, shipment documents accompanying purchases and sales of VCDs, product testing documents accompanying purchases and sales of VCDs, and VCD recall documents.**

**RESPONSE:**

ABC has produced copies of its Records and Information Management Policy and Record Retention Schedule for documents generated or received by ABC in effect during the time period from January 1, 2012, to December 31, 2019. (ABC-MDL2875-00000178-00000242) The production of those documents is not, and should not be interpreted as an acknowledgment that ABC has or should have the documents or types of documents listed in the Request. ABC's Responses with respect to the documents or types of documents listed in the Request are set forth in other Responses.

**X. COMPLAINTS**

20. **Produce documents sufficient to show all complaints you received from anyone concerning the purity or contamination of VCDs during the time period from January 1, 2012 to December 31, 2019, excluding litigation generated complaints.**

RESPONSE:

ABC has conducted a reasonable search of its reasonably accessible documents maintained in the ordinary course of business for recalled VCDs processed by ABC. ABC is not in possession of documents regarding “complaints,” as it understands that term, concerning the purity or contamination of any VCD.

**XI. INDEMNITY AGREEMENTS**

- 21. Produce final written indemnification agreements applicable to any claims currently pending in MDL 2875 against Wholesaler Defendants.**

RESPONSE:

ABC has previously produced copies of agreements with Manufacturer Defendants under which ABC purchased VCDs from Manufacturer Defendants between January 1, 2012, and December 31, 2019, which contain indemnification provisions. (ABC-MDL2875-00000243-00000252)

Dated: October 13, 2020

/s/ Jeffrey D. Geoppinger

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***Attorney for AmerisourceBergen  
Corporation***

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of October, 2020, I electronically transmitted the attached document to Co-Lead Counsel for Plaintiffs.

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/s/ Jeffrey D. Geoppinger

Jeffrey D. Geoppinger

## **EXHIBIT A**

## NDC Package Code

00093-7037-56  
00093-7037-98  
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